

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3 \* \* \*

4 NOSHERWAN KHAN RAJA,

Case No. 2:19-CV-00757-GMN-EJY

5 Plaintiff,

**ORDER**

6 v.

7 LAS VEGAS METROPOLITAN POLICE  
8 DEPARTMENT,

9 Defendants.

10 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C.  
11 § 1915 to proceed *in forma pauperis*. ECF No. 2. Plaintiff also submitted a Complaint attached to  
12 his *in forma pauperis* application on May 2, 2019.

13 **I. In Forma Pauperis Application**

14 Plaintiff has submitted the affidavit required by § 1915(a) showing an inability to prepay  
15 fees and costs or give security for them. ECF No. 2. Accordingly, the request to proceed *in forma*  
16 *pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Court will now review Plaintiff's  
17 Complaint.

18 **II. Screening the Complaint**

19 Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint  
20 under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims  
21 and dismiss claims that are frivolous, malicious, file to state a claim on which relief may be granted  
22 or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).  
23 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state  
24 a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112  
25 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual matter,  
26 accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v. Iqbal*, 556  
27 U.S. 662, 678 (2009). The court liberally construes *pro se* complaints and may only dismiss them

1 “if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which  
2 would entitle him to relief.” *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014) (quoting *Iqbal*,  
3 556 U.S. at 678).

4 In considering whether the complaint is sufficient to state a claim, all allegations of material  
5 fact are taken as true and construed in the light most favorable to the plaintiff. *Wyler Summit P’ship*  
6 *v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the  
7 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide  
8 more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
9 A formulaic recitation of the elements of a cause of action is insufficient. *Id.* Unless it is clear the  
10 complaint’s deficiencies could not be cured through amendment, a *pro se* plaintiff should be given  
11 leave to amend the complaint with notice regarding the complaint’s deficiencies. *Cato v. United*  
12 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Here, Plaintiff alleges claims of religious and national origin discrimination against  
14 Defendant. To sufficiently allege a *prima facie* case of discrimination in violation of Title VII to  
15 survive a § 1915 screening, Plaintiff must allege: (a) he belongs to a protected class; (b) he was  
16 qualified for the job for which he applied; (c) he was subjected to an adverse employment action;  
17 and (d) similarly situated employees not in his protected class received more favorable treatment.  
18 *See Shepard v. Marathon Staffing, Inc.*, 2014 U.S. Dist. Lexis 76097, \*5 (D. Nev. June 2, 2014)  
19 (citing *Moran v. Selig*, 447 F.3d 748, 753 (9th Cir. 2006)). In screening Plaintiff’s complaint and  
20 construing it liberally, the Court looks in part to the attachments provided. *See Swartz v. KPMG*  
21 *LLP*, 476 F.3d 756, 763 (9th Cir. 2007) (courts may generally consider allegations contained in  
22 pleadings, as well as exhibits attached to the complaint). Plaintiff’s complaint attaches his right to  
23 sue letter as well as a letter from the EEOC that indicates Plaintiff’s filing with the Nevada Equal  
24 Rights Commission was untimely. However, the EEOC letter refers only to when Plaintiff “signed  
25 and filed” his charge of discrimination. There is no information about when Plaintiff commenced  
26 his efforts to file such a charge. Thus, it may be that Plaintiff’s claims are timely or untimely.

However, even if Plaintiff's claims are timely, his religion and national origin race discrimination claims fail to sufficiently allege facts upon which relief may be granted pursuant to the standards established in *Iqbal*, 556 U.S. at 679. That is, Plaintiff must demonstrate a plausible claim for relief, which is more than a "mere possibility of misconduct." *Id.* Further, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 678. Plaintiff has not met the pleading standards or alleged sufficient facts to establish more than he is a member of a protected class and that he suffered an adverse employment action.

The Court therefore will dismiss Plaintiff's complaint without prejudice for the Plaintiff to file an amended complaint that meets the jurisdiction and pleading requirements.

If Plaintiff chooses to file an amended complaint, the document must be titled “Amended Complaint.” The amended complaint must contain a short and plain statement of the grounds for the Court’s jurisdiction. *See* Fed. R. Civ. P. 8(a)(1). Additionally, the amended complaint must contain a short and plain statement describing the underlying case and Defendant’s conduct that constitutes discrimination. *See* Fed. R. Civ. P. 8(a)(2). Although the Federal Rules of Civil Procedure adopt a flexible pleading standard, Plaintiff still must give the Defendant Las Vegas Metropolitan Police Department fair notice of the Plaintiff’s claims against it and Plaintiff’s entitlement to relief.

Additionally, Plaintiff is advised that if he files an amended complaint, the original complaint (ECF No. 2-1) no longer serves any function in this case. As such, the amended complaint must be complete in and of itself without reference to prior pleadings or other documents. The Court cannot refer to a prior pleading or other documents to make Plaintiff's amended complaint complete.

IT IS THEREFORE ORDERED that Plaintiff's Application for Leave to Proceed *In Forma Pauperis* (ECF No. 1) is GRANTED. Plaintiff will not be required to pay the filing fee in this action. Plaintiff is permitted to maintain this action to conclusion without the necessity of

1 prepayment of any additional fees or costs or the giving of a security for fees or costs. This Order  
2 granting leave to proceed *in forma pauperis* does not extend to the issuance of subpoenas at  
3 government expense.

4 IT IS FURTHER ORDERED that the Clerk of the Court must file Plaintiff's complaint  
5 (ECF No. 1-1).

6 IT IS FURTHER ORDERED that the Complaint (ECF No. 2-1) is DISMISSED without  
7 prejudice for failure to state a claim upon which relief can be granted, with leave to amend. If  
8 Plaintiff chooses to file an amended complaint, Plaintiff must file the amended complaint within  
9 30 days from the date of this Order. Failure to comply with this Order may result in a  
10 recommendation that this action be dismissed.

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12 DATED THIS 16th day of August, 2019.

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15 ELAYNA J. YOUCHAH  
16 UNITED STATES MAGISTRATE JUDGE  
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